SUBJECT INDEX.

	Page
Opinions Below	1
Jurisdiction	2
Statement of Facts	2-4
Summary of Argument	4-5

ARGUMENT.

POINT I—
The United States Supreme Court will not grant certiorari to review an interlocutory decree denying a motion to strike specifications to a bankrupt's discharge 6-10

POINT II—
The petition for writ of certiorari fails to disclose adequate reasons for allowance of the writ and should therefore be denied 10-16

POINT III—
The petition for writ of certiorari should be denied because the decree entered by the Circuit Court of Appeals was manifestly correct .. 16-19

Conclusion 19-20

Appendix 21-24

CASES CITED.

Page

American Construction Co. vs. Jacksonville T. & K. W. Ry. Co., 148 U. S. 372 11

Arnold vs. United States, 263 U. S. 427 7

Hamilton-Brown Shoe Co. vs. Wolf Bros. & Co., 240 U. S. 251 ..... 6, 11

In re Abramovitz, 253 F. 299 16

In re Brecher, 4 F. (2d) 1001 19

In re Brown, 42 F. (2d) 276 15

In re Corcoran, 4 F. Suppl. 988 19

In re Hodges, 70 F. (2d) 893 ..... 13, 19

In re Lerner, 70 F. (2d) 938 ..... 12, 13, 16

In re Levin, 176 F. 177 19

In re Rerat, 14 F. (2d) 607 ..... 17, 18

In re Shanker, 138 F. 862 15

In re D. H. Stiebel & Sons, 40 F. (2d) 637 18

Koch vs. Sidney Blumenthal & Co. Inc., 3 F. (2d) 395 16

Lerner vs. First Wisconsin National Bank, et al., 70 F. (2d) 938 ..... 12, 13, 16, 19

Rerat vs. Fisk Tire Inc., 28 F. (2d) 607 ..... 17, 18

Taylor vs. Voss, 271 U. S. 176 8

United Wall Paper Factories Inc., vs. Hodges, 70 F. (2d) 243 ..... 12, 19

TEXT BOOKS CITED.

Remington on Bankruptcy, 4th Ed.:

Section 3201 13-14

Section 3202 14-15

Section 3354 16

Section 3675 8

Section 3878 9-10

STATUTES, RULES, AND GENERAL ORDERS CITED.

Page

Section 240-a, Judicial Code, Ch. 229, 43 Stat. L. 936 ..... 2, 10, 12

Section 240-c, Judicial Code, Ch. 229, 43 Stat. L. 936 ..... 7, 21

Section 7, Bankruptcy Act 1898, as amended May 27, 1926 14

Section 14b, Bankruptcy Act 1898, as amended May 27, 1926 16

Section 24a, Bankruptcy Act 1898, as amended May 27, 1926 ..... 8, 10, 21

Section 24b, Bankruptcy Act 1898, as amended May 27, 1926 ..... 9, 12, 21

Section 25a, Bankruptcy Act 1898, as amended May 27, 1926 ..... 8, 22

Revised Rules of U. S. Supreme Court, Rule 38 (5) 10-11, 22

General Orders in Bankruptcy established November 28, 1898, as amended:

General Order XXXII as amended June 4, 1917 ..... 13, 18, 23

General Order XXXII as amended April 17, 1933 ..... 3, 5, 12, 17, 19, 20

General Order XXXVII 17, 23

In the Supreme Court of the United States

OCTOBER TERM, A. D. 1934.

No. 292

In the Matter of MINNIE LERNER, Bankrupt

MINNIE LERNER,
Petitioner,

vs.

FIRST WISCONSIN NATIONAL BANK OF MILWAUKEE, WISCONSIN, JAKE RAKITA, SARAH RAKITA, HARRY BLUMENFELD and DORA BLUMENFELD,
Respondents.

BRIEF FOR RESPONDENTS, Jake Rakita, Sarah Rakita, Harry Blumenfeld, and Dora Blumenfeld, in Opposition to Petition for Writ of Certiorari.

OPINIONS BELOW.

There was no opinion in the District Court.

The opinion of the Circuit Court of Appeals (R. 34-36) is reported in 70 F. (2d) 938.

JURISDICTION.

The interlocutory decree of the Circuit Court of Appeals was entered May 8, 1934 (R. 37). The order denying the petition for rehearing was entered June 19, 1934 (R. 38) and a stay of the mandate for ninety days was granted on June 19, 1934 (R. 38).

The jurisdiction of this court is invoked under Section 240-a of the Judicial Code as amended by the Act of February 13, 1925.

STATEMENT OF FACTS.

The petitioner Minnie Lerner was adjudicated a bankrupt on May 22, 1933, and on October 6, 1933, filed her petition for discharge (R. 2). Notice was given creditors setting November 18, 1933, as the day when the petition would be heard by the District Judge and creditors might show cause why the discharge should not be granted (R. 2-3). On November 17, 1933, respondent First Wisconsin National Bank of Milwaukee, duly filed a written notice of appearance in opposition to the petition for discharge and a written request to the court to extend the time to November 28, 1933, within which to file specifications (R. 3). On November 18, 1933, the respondents Jake Rakita, Sarah Rakita, Harry Blumenfeld and Dora Blumenfeld by their counsel appeared in opposition to the discharge and requested an extension to November 28th, 1933, to file specifications of their objections (R. 3).

On November 18, 1933, the District Judge entered an order granting objecting creditors ten days' time to file specifications of objections to the discharge of said bankrupt (R. 32).

On November 28, 1933 (within the lime limited by the District Judge) written specifications of objections to the bankrupt's discharge were filed by the respondents Jake Rakita, and the other respondents, based upon the transfer by the bankrupt of several parcels of real estate with intent to hinder, delay and defraud her creditors and further based upon the fact that said bankrupt and her husband Mayr Lerner caused a corporation to be organized to which said real estate was transferred, and in consideration for which bankrupt received one hundred seventy shares of the capital stock of said corporation, with the view of placing the equities in these properties beyond the reach of creditors and with the specific intent of protecting said equities and income from said real estate from suits of creditors and from the judgment liens of these respondents. And thereafter transferred said stock to secure an existing indebtedness to the detriment of the rights of these respondents (R. 4).

On November 28, 1933 (within the time limited by the District Judge) written specifications of objections to the bankrupt's discharge were filed by the respondent First Wisconsin National Bank of Milwaukee (R. 9), and a written order granting objecting creditors until November 28, 1933, to file specifications of objections, was filed (R. 4).

On December 15, 1933, bankrupt moved to strike the specifications because the same had not been filed within the time limited by General Order XXXII (11 U. S. C. A. Para. 53), as amended April 17, 1933 (R. 11), which motion was denied by the District Court on December 16, 1933 (R. 12). The decree of the District Court was an interlocutory order which required

trial of the issues raised by the specifications filed by objecting creditors and will result in a final decree granting or denying the bankrupt's petition for discharge.

An appeal from the order denying this motion was allowed by the Circuit Court of Appeals on January 4, 1934 (R. 18). Respondents moved to dismiss the appeal (R. 29 and 31) which motions were not granted, the matter being considered on the merits (Decision R. 34). The District Court's order denying the bankrupt's motion to strike the specifications was affirmed by the Circuit Court of Appeals (R. 37). The decree of the Circuit Court of Appeals is an interlocutory decree which requires the trial of the issues raised by the specifications on file and will result in a final decree granting or denying the bankrupt's petition for discharge. A petition for rehearing was denied June 19, 1934, and a stay of the mandate for ninety days was granted (R. 38).

SUMMARY OF ARGUMENT.

The United States Supreme Court will not grant certiorari to review an interlocutory decree denying a motion to strike specifications of objections to a bankrupt's discharge. Upon denial of the petition for certiorari the District Court will hear bankrupt's petition for discharge and evidence offered in support of the specifications of objecting creditors and enter a final decree granting or denying the discharge.

The order entered by the District Court is a preliminary order in a proceding in bankruptcy, as distinguished from a controversy arising in bankruptcy proceedings.

The order was affirmed by the Circuit Court of Appeals pursuant to its jurisdiction to revise and review under Section 24b of the Bankruptcy Act, and such decision should be final.

The petition for the writ fails to disclose adequate reasons for allowance of the writ. There is no conflict among the various Circuit Courts of Appeals covering the construction of General Order XXXII as amended April 17, 1933, and the other reasons relied on by the petitioner are not within the terms of Rule 38 of the Revised Rules of the United States Supreme Court and applicable decisions.

The decree entered by the Circuit Court of Appeals was manifestly correct. On the return day several objecting creditors appeared in the District Court in opposition to the discharge, and on that day the District Judge entered an order granting ten days within which to file specifications, and these were filed within said time. The District Judge has jurisdiction to vary the time for filing specifications which are uniformly held to be pleadings. Petitioner does not claim that the District Judge abused his discretion, but relies wholly upon the proposition that the District Judge has no discretion.

ARGUMENT

POINT I.

The United States Supreme Court will not grant certiorari to review an interlocutory decree denying a motion to strike specifications to a bankrupt's discharge.

The United States Supreme Court has defined a review of certiorari in Rule 38 (5) of Revised Rules of the Supreme Court of the United States, as follows:

> "A review on writ of certiorari is not a matter of right but of sound judicial discretion and will be granted only where there are special and important reasons therefor."

Petitioner has failed to make a showing that there are special or important reasons for granting the writ and further failed to set forth such reasons, if any.

The United States Supreme Court has adopted the following General Rule with respect to its jurisdiction under Sec. 240 of the Judicial Code.

> "As has been many times declared, this is a jurisdiction to be exercised sparingly, and only in cases of peculiar gravity and general importance, or in order to secure uniformity of decision."
>
> *Hamilton Brown Shoe Co. vs. Wolf Bros. & Co.,* 240 U. S. 251, 258.

The order of the District Judge denying bankrupt's motion to strike out specifications has no finality. It does not end litigation but merely requires a trial of

the issues raised by objecting creditors' specifications and upon the close of such trial a final decree will be entered granting or denying bankrupt's petition for discharge.

The Supreme Court of the United States has held that an appeal from an interlocutory decree must be dismissed for lack of jurisdiction.

In *Arnold vs. United States,* 263 U. S. 427, the court held at page 434:

> "It is well settled that a case may not be brought here by writ of error or appeal in fragments; that to be reviewable a judgment or decree must be not only final, but complete; that is, final not only as to all the parties, but as to the whole subject-matter and as to all the causes of action involved; and that if the judgment or decree be not thus final and complete, the writ of error or appeal must be dismissed for want of jurisdiction."

The rule is well established that this court will not review interlocutory decrees by appeal.

Congress has from time to time passed Acts for the purpose of relieving the overburden of controversies appealable as of right to the Supreme Court. One of the most recent of these is the Act of February 13, 1925, to amend the Judicial Code, which provides in *Section 240 (c): Chapter 229, 43 Stat. L. 936:*

> "No judgment or decree of a Circuit Court of Appeals or of the Court of Appeals of the District of Columbia shall be subject to review by the Supreme Court otherwise than as provided in this section."

It is also respectfully submitted tha. the interlocutory decree in this matter has been entered in a proceeding in bankruptcy as distinguished from a controversy arising in bankruptcy proceedings.

> "Questions arising as to the right of the bankrupt to his discharge are not 'controversies arising in bankruptcy proceedings' but are 'proceedings in bankruptcy' themselves."
>
> *Remington on Bankruptcy,* 4th Ed. Sec. 3675.

A recent decision of this court defines a controversy arising in bankruptcy proceedings in the case of *Taylor vs. Voss,* 271 U. S. 176, 180, as follows:

> "It is now settled by the decisions of this court, that the 'controversies arising in bankruptcy proceedings' referred to in Sec. 24a, include those matters arising in the course of a bankruptcy proceeding, which are not mere steps in the ordinary administration of the bankrupt estate, but present, by intervention or otherwise distinct and separable issues between the trustee and adverse claimants concerning the right and title to the bankrupt's estate." (Citing cases.)

The order entered by the District Judge in this case was not appealable to the Circuit Court of Appeals under Sec. 25a Bankruptcy Act July 1, 1898, 30 Stat. L. 553, C 541 s 25 as amended May 27, 1926, as it is not a judgment adjudging or refusing to adjudge the petitioner a bankrupt nor is it a judgment granting or denying a discharge; nor a judgment allowing or rejecting a debt or claim of $500 or over; and, since this order is not a controversy arising in bankruptcy proceedings, it is also not appealable under Section 24a, Bankruptcy Act, 1898, as amended May 27, 1926.

It is respectfully submitted that there is only one possible theory upon which the order entered by the District Judge was appealable to the Circuit Court of Appeals and that, under the provisions of Section 24b of the Bankruptcy Act of July 1, 1898, 30 Stat. L. 553, c 541 s 24, as amended May 27, 1926. The latter section provides that the several Circuit Courts of Appeal shall have jurisdiction in equity, either interlocutory or final to *superintend and revise* in matter of law the proceedings of the several inferior courts of bankruptcy within their jurisdiction. It is apparent therefore, that the order entered by the Circuit Court of Appeals in this matter is merely one made pursuant to the jurisdiction of the Circuit Court of Appeals to *superintend and revise* in matter of law the proceedings of the inferior court of bankruptcy.

Respondents moved to dismiss the appeal upon the ground that the order appealed from was not final, was an order preceding a final decision, the appeal was premature, and the District Court had properly exercised its discretion. The Circuit Court of Appeals, however, held the order entered by the District Court to be appealable under Section 24b of the Bankruptcy Act of 1898 as amended May 27, 1926.

We have failed to find any case in which the Supreme Court of the United States has ever granted a writ of certiorari to review a decree entered by a Circuit Court of Appeals wherein its jurisdiction arose under Section 24b Bankruptcy Act of 1898 as amended. A leading text writer states:

> "It does not appear that the Supreme Court has ever laid down any rules as to what cases it will review on certiorari and what it will re-

fuse to review. If there is any classification, the Supreme Court has not declared it."

Remington on Bankruptcy, Fourth Edition, Section 3878.

POINT II.

The petition for writ of certiorari fails to disclose adequate reasons for allowance of the writ and should therefore be denied.

Section 240-a of the Judicial Code provides that all review of decrees of the Circuit Court of Appeals shall be taken by writ of certiorari issued by the Supreme Court. The Supreme Court has provided in Rule 38 (5) Revised Rules of the Supreme Court of the United States that "A Review on writ of certiorari is not a matter of right but of sound judicial discretion and will be granted only where there are special and important reasons therefor."

The rule further provides certain reasons which, while neither controlling nor fully measuring the court's discretion, indicate the nature of reasons which will be considered by the Supreme Court.

Rule 38 (5)—(b):

"Where a Circuit Court of Appeals has rendered a decision in conflict with the decision of another Circuit Court of Appeals on the same matter; or has decided an important question of local law in a way probably in conflict with applicable local decisions; or has decided an important question of general law in a way probably untenable or in conflict with the weight of authority; or has decided an important question of federal law which has not been, but should

> be, settled by this court; or has decided a federal question in a way probably in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision."
>
> *Revised Rules of the Supreme Court of the United States*, p. 32.

The Supreme Court of the United States has also enunciated the general rule that certiorari is an extraordinary writ and the jurisdiction is to be used sparingly and only in cases of peculiar gravity and special importance. *Hamilton-Brown Shoe Co. vs. Wolf Bros. & Co.*, 240 U. S. 251 at 258.

It is patent that the purpose of the Act of February 13, 1925, and of prior Acts was to reduce the burdens of the Supreme Court and to transfer a large part of its appellate jurisdiction to the Circuit Court of Appeals. *American Construction Co. vs. Jacksonville, Tampa & Key West Ry. Co.*, 148 U. S. 372.

One of the rules relied upon by petitioner for allowance of the writ of certiorari, is that the Circuit Court of Appeals has decided an important question of bankruptcy procedure which should be settled by the Supreme Court. Rule 38 of the Revised Rules of the U. S. Supreme Court does not include questions of bankruptcy procedure as reasons for invoking the jurisdiction of the court. It is conceivable that many "questions of bankruptcy procedure" might be deemed important to the person affected, but none of which should be an adequate reason for granting certiorari by the Supreme Court. Respondents respectfully submit that this court should definitely state that

all questions of bankruptcy procedure which are reviewable by the Circuit Court of Appeals under Section 24b Bankruptcy Act 1898, as amended May 27, 1926, must be finally decided by the Circuit Court of Appeals and should under no circumstances be recognized as an adequate reason for invoking jurisdiction of the Supreme Court to grant a writ of certiorari.

The next reason for allowance of the writ relied on by petitioner is based upon the claim that some uncertainty exists as to the construction to be placed upon General Order XXXII as amended April 17, 1933. The decision of the Circuit Court of Appeals in the case at bar affirms the decision of the District Court on the ground that the District Court has discretion to enter an order on the return day of the petition for discharge granting creditors who have appeared in opposition to the discharge ten days' time to file specifications of their objections. *In re Lerner vs. First Wisconsin National Bank, et al.,* 70 F. (2d) 938.

The only decision of the Circuit Court of Appeals claimed to be in conflict with the *Lerner* case is *United Wall Paper Factories Inc. vs. Hodges,* 70 F. (2d) 243. In the latter case notice was given to creditors that on May 22, 1933, the creditors must show cause why the bankrupt should not be discharged. On that day several objecting creditors appeared in opposition but did not file their specifications until May 31, 1933. No order was entered by the District Court granting additional time within which to file specifications. The bankrupt moved to strike out the specifications on the ground that they were not filed in time and the Dis-

trict Judge decided that good cause had not been shown for failure to file specifications on or before May 22, 1933. The Circuit Court of Appeals held with respect to General Order XXXII, as amended, at page 244:

> "The order, as amended, may have left power in the District Court to excuse a default; we do not find it necessary to decide, and arguendo we shall assume that it did."

It is apparent that the Circuit Court of Appeals in the *Hodges* case has merely decided that the District Judge did not abuse his discretion in declining to permit the specifications to be filed nine days after the return day. In the *Lerner* case, the Circuit Court of Appeals has decided that the District Judge did not abuse his discretion in entering an order on the return day granting ten days' time within which to file specifications, and did not abuse his discretion in refusing to strike out the specifications which were filed within ten days, the period allowed by the order. It is respectfully submitted that the cases are not in conflict but are in harmony with what a leading text writer on the subject of Bankruptcy says:

> "Sec. 3201. Although the express permission of former General Order 32 that the time for filing specifications in opposition to the discharge might be shortened or enlarged by special order of the judge was eliminated when the Supreme Court amended the General Order in 1933, yet it cannot rightly be inferred from such change that the general power of courts to grant extension of time in remedial matters is in this particular abrogated; indeed, the retention of the requirement that appearance in opposition must be entered in writing on the return day, while, at the same time, it is prescribed that

> specifications in writing are to be filed also on the return day, would carry the necessary implication that, on occasion, an extension of time to file the specifications might be granted; otherwise there would not be the double requirement of the entry of appearance on the return day and of the filing of the specifications on the same day, since the specifications themselves would constitute the most positive form of entry of appearance in opposition. Perhaps the expressing of the power to grant such extension was eliminated precisely because unnecessary." *Remington on Bankruptcy,* Fourth Edition, Section 3201.

The third reason relied on by petitioner for allowance of the writ is equally insufficient. Bankrupt did not appear on the return day of the order to show cause either in person or by counsel. The application of the Bankrupt for a discharge was set for hearing on November 18, 1933. In this connection it is respectfully submitted that the duty of the Bankrupt to be present at this hearing is specifically imposed by Section 7 of the Bankruptcy Act of 1898, 30 Stat. L. 548; c 541 s 7; 2 Supp. 848, which provides:

> "The bankrupt shall (1) attend the first meeting of his creditors if directed by the court or a judge thereof to do so *and the hearing upon his application for a discharge if filed*" (Italics ours).

The provision of the Bankruptcy Act just cited is well recognized and has been interpreted as follows:

> "The bankrupt *must* present himself at the hearing upon his application for discharge, and is not permitted by absence to defeat the creditors from proving their grounds of opposition. He *must attend* without being ordered to do so;

and he is not entitled to reimbursement of expenses in so doing" (Italics ours).

Remington on Bankruptcy, 4th Ed. Sec. 3202.

This duty of the bankrupt to appear at the hearing on his application for discharge was before the court in the case of *In re Shanker,* 138 F. 862, in which it was held on page 864:

> "Such a hearing is not a meeting of creditors; nor is it essentially an examination of the bankrupt, although it may result in that. It is simply the occasion assigned for the trial of the issues raised by the exception to his discharge, in which, unlike the other proceedings subsequent to an adjudication, the bankrupt is an immediate and interested party. As such it is no hardship upon him to require that he shall be on hand to meet any demand in the way of evidence that may be made upon him. * * * It follows that the bankrupt must attend before the referee at the further hearing upon his application for a discharge, on being given opportunity therefor, and that upon his failure to do so, the application must be dismissed. And it is so ordered."

And thus the court also held in approving the decisions of the case above cited, that:

> "It is manifest, therefore, that the text authorities and the court in the case of In re Shanker, supra, have suggested the salutary and logical interpretation of the clause in question." *In re Brown,* 42 F. (2d) 276 at p. 277.

If the bankrupt had been present and had opposed the Order of the District Judge extending the time to file specifications, the Order granting or refusing an extension would have been binding upon the bankrupt

and the objecting creditors. And if the court had refused to extend the time, upon objection raised by the bankrupt, objecting creditors would have had an opportunity to file written specifications on the day in question. By not opposing said order the bankrupt has apparently acquiesced and the Circuit Court of Appeals correctly held:

> "To permit bankrupt to take advantage of an order entered upon her apparent acquiescence would be unfair." *In re Lerner,* 70 F. (2d) 938 at 939.

POINT III.

The petition for certiorari should be denied because the decree entered by the Circuit Court of Appeals was manifestly correct.

The District Court has jurisdiction to hear the application for a discharge and such proofs and pleas as may be made in opposition thereto by the trustees or other parties in interest at such time as will give the parties a reasonable opportunity to be fully heard. *Section 14 b, Bankruptcy Act of 1898, as amended May 27, 1926.*

Specifications of objections to the bankrupt's discharge are uniformly held to be pleadings, and are so defined in *Section 3354, Remington on Bankruptcy,* 4th Ed., in which the writer states as follows:

> "Specifications of objections to discharge are pleadings." Citing the following cases:
>
> *In re Abramovitz,* 253 F. 299;
>
> *Koch vs. Sidney Blumenthal & Co. Inc.,* 3 F. (2d) 395 and other cases.

The District Judge has general authority to vary the time allowed for return of process, of appearance and pleadings, as specifically provided in General Order XXXVII which reads in part as follows:

> "the judge may, by special order *in any case,* vary the time allowed for return of process, for appearance and pleading * * * and may otherwise modify the rules for the preparation of any particular case so as to facilitate a speedy hearing" (Italics ours).

It is therefore submitted that the District Court in the case at bar merely exercised its general jurisdiction and authority as recognized by General Order XXXVII when it entered an order extending the time for filing the specifications. It is also submitted that the time for filing pleadings is wholly in the control of the District Court since the rule is well established that trial courts may enlarge the time to plead when such time to plead is fixed by statute.

Under General Order XXXII as it existed prior to April 17, 1933, the Circuit Court of Appeals for the 8th Circuit had occasion to consider the construction of the General Order and determined that the District Court had power to permit the entry of appearances of creditors even after the day fixed to show cause, and the court in the case of: *In re Rerat,* 14 F. (2d) 607, held at page 608:

> "The power of the court to extend the time for the objecting creditor to appear and plead in opposition to the discharge of the bankrupt is analogous to the well-established rule that courts may enlarge and extend the time to plead in ordinary lawsuits, when the time to plead is fixed by statute. If the court has discretion-

ary power to extend the time to plead, when the time is fixed by statute, it seems it would also have the same power when the time is limited by a rule of court.

"The authorities seem unanimous to the effect that it is within the discretion of the court for good cause shown, to extend the time within which a creditor may enter his appearance in opposition to a bankrupt's discharge, even after the expiration of the limit as provided in General Order No. 32."

And the Circuit Court of Appeals, on petition to review the order, stated that the District Court was justified in exercising its discretion, and held:

"While the power to extend the time should be cautiously exercised, we think there was no abuse of that power here." *Rerat vs. Fisk Tire Inc.*, 28 F. (2d) 607.

This discretion of the District Court in the administration of General Order XXXII as amended June 4, 1917, is upheld in a decision by the Circuit Court of Appeals for the 6th Circuit in the following language:

"* * * When it became apparent that his authority to so act was technically defective, we think the District Court had power to entertain and allow a motion to be substituted on the part of other creditors, who had refrained from entering an appearance and filing specifications only because such act seemed vain in view of their apparent representation by the trustee. The decisions upon the point all hold the right to enlarge the time for entering appearance and filing exceptions rests in the sound discretion of the District Judge." *In re: D. H. Stiebel & Sons*, 40 F. (2d) 637.

This discretionary power in the District Court was also recognized in the following cases:

In re: Brecher, 4 F. (2d) 1001, C. C. A. 531, 2nd Circuit.

In re: Levin, 176 F. 177, 99 C. C. A. 531, 1st Circuit.

In view of the undisputed fact that neither petitioner nor her attorney were present at the time set for the hearing of her petition for discharge and objecting creditors having appeared and having requested a short extension of time within which to file their specifications and objections in detail, and the bankrupt not having objected thereto, it is submitted that the District Judge was within his discretion to grant the order which is complained of by bankrupt.

Only two other cases have considered the effect of General Order XXXII, since it was amended on April 17, 1933. The case of *In re Hodges,* 70 F. (2d) 893, and *United Wall Paper Factories vs. Hodges,* 70 F. (2d) 243. And the ruling shown to be in harmony with the *Lerner* case. The other case is *In re Corcoran,* 4 Fed. Supp. 988, decided Oct. 16, 1933. This was a decision by the District Judge holding that where creditors did not appear prior to the return day but came in several days after the return day, the Judge would not have discretion to extend the time for opposing a discharge and filing specifications. This case is clearly distinguishable from the case at bar.

CONCLUSION.

If petitioner's interpretation of the amended order was to be given effect, it would, in many cases, work a great injustice. As happens frequently, creditors

appear in person on the return day pursuant to notice and orally state that they object to bankrupt's discharge. There is nothing in the notice requiring them to retain counsel or file written specifications on the return day. They are in a Court of Equity and expect that they will have an opportunity to assist in preventing an undeserving bankrupt from obtaining the benefits of the Bankruptcy Act—the court tells them they may have several days (usually ten) within which to retain counsel or themselves file written specification of their objections. How can the bankrupt be prejudiced by such procedure? If he is innocent of the acts charged as the basis of the objection he will be discharged, if he is guilty of them he ought not to be. On the other hand, to contend that the trial court has no discretion in this situation would be to use the regulation to assist those who are not entitled to the beneficent provisions of the Bankruptcy Act.

For the foregoing reasons the respondents Jake Rakita, Sarah Rakita, Harry Blumenfeld and Dora Blumenfeld, respectfully submit that the petition for writ of certiorari should be denied.

September 7, 1934.

Respectfully submitted,

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APPENDIX.

Act of February 13, 1925, Chapter 229, 43 Stat. L. 936:

Sec. 240 (a) In any case, civil or criminal, in a circuit court of appeals, or in the Court of Appeals of the District of Columbia, it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, whether Government or other litigant, to require by certiorari, either before or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted writ of error or appeal.

Sec. 240 (c) No judgment or decree of a circuit court of appeals or of the Court of Appeals of the District of Columbia shall be subject to review by the Supreme Court otherwise than as provided in this section.

Bankruptcy Act of July 1, 1898, 30 Stat. L. 553, c 541, s 24a, 24b and 25a, as amended May 27, 1926:

Sec. 24a. The Supreme Court of the United States, the circuit courts of appeal of the United States, the Court of Appeals of the District of Columbia, and the supreme courts of the Territories, in vacation, in chambers and during their respective terms, as now or as they may be hereafter held, are hereby invested with appellate jurisdiction of controversies arising in bankruptcy proceedings from the courts of bankruptcy from which they have appellate jurisdiction in other cases.

Sec. 24b. The several circuit courts of appeal and the Court of Appeals of the District of

Columbia shall have jurisdiction in equity, either interlocutory or final, to superintend and revise in matter of law (and in matter of law and fact the matters specified in Section 25) the proceedings of the several inferior courts of bankruptcy within their jurisdiction. Such power shall be exercised by appeal and in the form and manner of an appeal, except in the cases mentioned in said Section 25 to be allowed in the discretion of the appellate court.

Sec. 25a. That appeals, as in equity cases, may be taken in bankruptcy proceedings from the courts of bankruptcy to the circuit courts of appeal of the United States and the Court of Appeals of the District of Columbia and to the Supreme Courts of the Territories in the following cases, to-wit: (1) From a judgment adjudging or refusing to adjudge the defendant a bankrupt; (2) from a judgment granting or denying a discharge; and (3) from a judgment allowing or rejecting a debt or claim of $500 or over. Such appeal shall be taken within thirty days after the judgment appealed from has been rendered, and may be heard and determined by the appellate court in term or vacation, as the case may be.

Revised Rules of the Supreme Court of the United States:

Rule 38-5. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered: * * * (b) Where a circuit court of appeals has rendered a decision in conflict with the decision of another circuit court of appeals on the same matter; or has decided an impor-

tant question of local law in a way probably in conflict with applicable local decisions; or has decided an important question of general law in a way probably untenable or in conflict with the weight of authority; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way probably in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.

General Orders in Bankruptcy adopted by the Supreme Court of the United States November 28, 1898:

General Order XXXII. A creditor opposing the application of a bankrupt for his discharge, or for the confirmation of a composition, shall enter his appearance in opposition thereto on the day when the creditors are required to show cause, and shall file a specification in writing of the grounds of his opposition within ten days thereafter, unless the time shall be shortened or enlarged by special order of the judge. (As amended June 4, 1917.)

General Order XXXII. A creditor opposing an application for discharge, or for the confirmation of a composition or extension proposal, shall enter his appearance in opposition thereto on the day when the creditors are required to show cause, and shall at the same time file a specification in writing of the grounds of his opposition. (As amended April 17, 1933.)

General Order XXXVII. In proceedings in equity, instituted for the purpose of carrying into effect the provisions of the act, or for en-

forcing the rights and remedies given by it, the rules of equity practice established by the Supreme Court of the United States shall be followed as nearly as may be. In proceedings at law, instituted for the same purpose, the practice and procedure in cases at law shall be followed as nearly as may be. But the judge may, by special order in any case, vary the time allowed for return of process, for appearance and pleading, and for taking testimony and publication, and may otherwise modify the rules for the preparation of any particular case so as to facilitate a speedy hearing.

30

SUPREME COURT OF THE UNITED STATES.

Nos. 292 and 496.—October Term, 1934.

Minnie Lerner, Petitioner, 292 *vs.* First Wisconsin National Bank of Milwaukee, Wisconsin, Jake Rakita, Harry Blumenfeld, et al.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.
Lawyers County Trust Company, Petitioner, 496 *vs.* William Reichert and Paul Kollmar, Individually and as Co-partners trading under the name of W. Reichert & Co.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[February 4, 1935.]

Mr. Justice McReynolds delivered the opinion of the Court.

These causes require consideration of General Order in Bankruptcy No. XXXII, as amended, effective April 24, 1933. This Order, as it stood before that day, and the amendments then adopted, follow. Deleted words are within the brackets; words added are italicized.

"XXXII. Opposition to Discharge or Composition *or extension.*

"A creditor opposing [the] *an* application [of a bankrupt] for [his] discharge, or for the confirmation of a composotion *or extension proposal,* shall enter his appearance in opposition thereto on the day when the creditors are required to show cause, and shall *at the same time* file a specification in writing of the grounds of his opposition [within ten days thereafter, unless the time shall be shortened or enlarged by special order of the judge].

Whether, under the amended order, Bankruptcy Courts may permit a creditor opposing an application for discharge to file

written specifications showing the grounds of his opposition after "the day when creditors are required to show cause", is the question for determination.

In No. 292 the Circuit Court of Appeals, Seventh Circuit, held that when good cause is shown, such an extension may be granted. In No. 496 the Circuit Court of Appeals, Second Circuit, ruled to the contrary. The latter court, we think reached the proper conclusion. Reversal of the challenged judgment must follow in No. 292; affirmance in No. 496.

The purpose of the 1933 amendments to Order No. XXXII was to prevent continuation of abuses then apparent.

The so-called "Donovan Report", March 22, 1930, on "Administration of Bankrupt Estates", printed (1931) for the House Judiciary Committee, 71st Congress, 3rd Session, p. 116, stated:

> "An unscrupulous creditor who desires to get something more than the others may be tempted to file a notice of appearance (a simple 4-line document) at the time of the hearing on confirmation, knowing that this will hold up the entire proceeding for at least another ten days even if he does not follow up the notice of appearance with detailed specifications of objection. During this 10-day period he may hope to get paid off by the bankrupt. If the bankrupt refuses or is unable to strike a bargain, the creditor may then file his specifications of objection, so that the bankrupt will face another three weeks' delay, during the process of which he may be finally induced to come to terms".

Reporting on "Bankruptcy Law and Practice", (Dec. 8, 1931), Senate Document No. 65, 72nd Congress, 1st Session, (p. 16), the Attorney General asserted:

> "The clerks of 72 district courts reported to us that out of the 49,928 cases closed by them in the fiscal year 1930, 27,426 applications for discharge had been disposed of.
>
> "In only 1,042 of these cases individual creditors at the time of the hearing before the judge on the bankrupt's application filed notices of appearance stating that they intended to oppose the discharge. Under General Order XXXII, these creditors were then required to file specifications in writing within 10 days, setting forth the grounds of this opposition, upon the filing of which the issues would be tried.

"But in 330 of these 1,042 cases the creditors did not follow up their notices of appearance by filing written specifications. Why?

"Presumably, because the creditors were either bought off by the bankrupt as already described, or because indifferent, or were unwilling to incur further expense. . . ."

By memorandum of April 3, 1933, submitted to us, Solicitor General Thacher, who had devoted much time and thought to bankruptcy proceedings, suggested certain amendments and additions to the General Orders—among them, those to No. XXXII adopted as above shown. After referring to the passages from Congressional publications, which we have quoted, he declared:

"For these reasons it is recommended with respect both to discharges and to compositions that the specifications of opposition should be filed with the appearances. Ample time is afforded by the Act to opposing parties to obtain their evidence and make up their minds. Under Section 58 creditors must be given at least 30 days' notice of all applications for discharge, and may after receipt of the notice, if they have not done so already, examine the bankrupt and other parties under Section 21 (a). Under compositions creditors may examine the bankrupt or debtor at the first meeting and at any time thereafter under section 21 (a), and must be given at least ten days' notice of the application for confirmation."

Having considered the facts, thus brought to our attention, and those otherwise known, it seemed proper to adopt the suggested amendment to Order XXXII.

The language of the amended Order is mandatory; it is controlling in circumstances like those here presented; strict compliance should be accorded. Under Order XXXVII, and permissive provisions of the Bankruptcy Act, we think the courts may exercise discretion sufficient for the successful conduct of proceedings in varying circumstances. Thus, while an objecting creditor must file specifications showing the grounds of his opposition on the day when creditors are required to show cause, that day may be fixed or postponed by the court in view of the existing situation.

No. 496 Affirmed.
No. 292 Reversed.